Since the second appellant parted with possession in 1966 at least, I failed to see how he could possibly have remained a statutory tenant when these proceedings commenced in 1973. Counsel for the appellants submitted that it is only when such a statutory tenant dies that such a tenant ceases to have the protection of section 28. I could not accept this proposition. Moreover, the second appellant not only parted with possession but ceased altogether to remain in possession thereof.

I accordingly dismissed the appeal against the judgment of the District Judge with costs but allowed a stay pending further appeal.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Mallal & Namazie.*

IN *RE* AN APPLICATION BY N.H.E. NASSIM

[O.C.J. (Winslow J.) September 26, 1975]
[Singapore — Originating Motion No. 15 of 1975]

Administrative Law — Appointment of assessors for hearing of a land acquisition appeal — Objection to assessors — Application for two other assessors dismissed by Commissioner of Lands — Application for certiorari to quash decision of Commissioner of Lands and for prohibition — Whether real likelihood of bias — Land Acquisition Act (Cap. 272), s. 26.

Land Acquisition — Assessors — Panel of — Appointment of — Likelihood of bias.

In this case the Commissioner of Lands for the purpose of hearing an appeal before the Appeals Board (Land Acquisition) had selected Messrs. Goh Kee Song and Charlie Chi Swan Chiang to be assessors. The applicant objected to both as assessors and applied for the selection of two other assessors. The Commissioner of Lands heard the application and dismissed it. The applicant thereupon applied for an order of *certiorari* to quash the order of the Commissioner of Lands and for an order of prohibition prohibiting him from further proceeding in the appeal. The grounds of objection were (a) that the assessors selected did not possess adequate special knowledge or experience relating to the valuation of land and (b) in the case of Mr. Goh Kee Song that in view of his past and present affiliations with the Government, he would be biased.

Held: (1) the Land Acquisition Act does not require assessors to be specially qualified in any particular manner or respect and therefore the Commissioner of Lands was entitled to make his selection from the panel appointed by the Minister;

(2) there was not a shred of evidence to support the contention that merely by virtue of his previous appointments, there was a real likelihood of bias on the part of the Appeal Board as a result of Mr. Goh Kee Song being selected as an assessor from the panel appointed by the Minister;

(3) the Government was not a party before the appeal board and the fact that Mr. Goh Kee Song had been involved with the interests of the government, did not make him unfit to act as assessor in the appeal.

Cases referred to:-

(1) *R.* v. *Camborne Justices* [1955] 1 Q.B. 41.

(2) *Re Appointment of S.H.D. Elias* [1959] M.L.J. 92.

ORIGINATING MOTION.

K. E. Hilborne for the applicant.

Rajan Menon (State Counsel) for the Attorney-General.

Winslow J.: By a letter dated April 1, 1975, the applicant herein who was then the appellant in an appeal pending before the Appeals Board (Land Acquisition) was informed by the Registrar of that Board that the Commissioner thereof had pursuant to section 26 of the Land Acquisition Act (Cap. 272) selected Messrs. Goh Kee Song and Charlie Chi Swan Chiang to be assessors at the hearing thereof. On April 8 the applicant's solicitors replied stating their objections to both as assessors intimating that an application of an interlocutory nature would be made under Regulation 8 of the Land Acquisition (Appeals Board) Regulations, 1967 which was accordingly made on April 10 applying for the selection of two other assessors to be appointed in substitution for the assessors to whom objection had been taken.

The grounds of objection were stated to be —

"1. *As to Mr. Goh Kee Song and Mr. Charlie Chi Swan Chiang.*

It is understood that Mr. Goh Kee Song is a Public Accountant by profession and that he does not possess adequate special knowledge or experience relating to the valuation of land and/or the quarrying, sale or marketing of sand and it is respectfully suggested that he cannot be said therefore to be appropriately qualified to act as an assessor in these proceedings. It is understood that Mr. Charlie Chi was formerly a director of Eastern Realty Company Limited and other companies engaged in the sale purchase and development of immoveable property and as such would have been appropriately qualified to act as an assessor in so far as the valuation of land as such was concerned. However, it is understood that Mr. Charlie Chi Swan Chiang retired from business some years ago and is no longer actively and continuously concerned in such businesses.

2. *As to Mr. Goh Kee Song alone.*

It is understood that Mr. Goh Kee Song was Registrar of Vehicles at sometime and thereafter was Chairman of the Singapore Telephone Board for some years. It is submitted that it is inappropriate and contrary to the accepted principles of natural justice that an assessor with past or present affiliations with the Government of Singapore should participate in proceedings to which the Government itself is a party."

Pursuant to Regulation 8, the Attorney-General on behalf of the Collector of Land Revenue replied, as he was entitled to do, *inter alia*, as follows —

"(a) The Minister for Law and National Development in accordance with the powers conferred by sub-sections (2) and (4) of section 26 of the Land Acquisition Act appointed Mr. Charlie Chi Swan Chiang and Mr. Goh Kee Song as members of the Panel of Assessors to the Appeals Board for a further period of 2 years with effect from June 17, 1973 vide Gazette Notification No. 2161 dated July 13, 1973.

(b) The Commissioner of Appeals Board in accordance with section 26(1)(a) of the Land Acquisition Act (Chapter 272) duly selected Mr. Charlie Chi Swan Chiang and Mr. Goh Kee Song.

(c) The Grounds of the Application by the Appellant herein are without any legal basis."

The parties were heard on April 25 by the Commissioner, sitting alone, as was his practice on such applications at the end of which he communicated his reasons for dismissing the application in writing as follows: —

"This was an application by the appellant under Regulation 8(1) of the Land Acquisition (Appeals Board) Regulations 1967 objecting under Regulation 13(3) of the said Regulations to my selection of Mr. Goh Kee Song and Mr. Charlie Chi Swan Chiang from amongst the panel of assessors appointed under the provisions of subsection (2) of section 26 of the Act. The application was for the selection of two other assessors in substitution for the said two assessors already selected by me.

Having heard counsel for the appellant and for the respondent, I found that the application was entirely without merit and it was therefore dismissed with costs."

On May 5, the applicant pursuant to Order 53 rule 1(2) filed a statement and affidavit in support of his application for leave to apply for orders of *certiorari* and prohibition in Originating Summons No. 144 of 1975. Such leave was granted on May 9, 1975 on an *ex parte* application by the learned Chief Justice. This motion accordingly came before me for hearing with both parties represented last Tuesday, September 22, 1975 asking for an order of *certiorari* to remove into this court and quash the order of the Commissioner of April 25, 1975 and for an order of prohibition prohibiting him from further proceeding with the hearing of Appeal No. A.B. 41 of 1972.

The grounds of relief are substantially those stated in his original two grounds of objection to the two assessors in question but before me, towards the end of his address, his counsel withdrew the third technical ground alleging lack of jurisdiction on the part of the Commissioner to make his order of April 25 whilst sitting alone. This is not surprising because, as matters stood, it would have been an impossible situation to require the Commissioner to sit on the interlocutory application which he heard under Regulation 8 together with the two assessors already selected by him for purposes of the appeal and to whose fitness as assessors objection had been taken and to whose presence at the hearing of the interlocutory application counsel would have been bound to object. To cite Mr. Hilborne's own words with regard to Mr. Goh Kee Song, during the hearing of the motion, his presence would presumably have invited the objection that it was in breach of one of the principles of natural justice that he should not sit as a judge in his own cause!

It is important to remember that the decision by the Board on an appeal is that of the Commissioner alone who is not bound by the advice or opinion of either or both of the assessors selected by him to sit on the Board with him. This is made clear by section 27 of the Act.

Ground Number One: Which brings me to a consideration of the meaning of the expression "assessor" for which counsel for the applicant contended in relation to his *first ground viz.*, that neither assessor was qualified to sit as an assessor.

This word is not given any statutory definition and recourse had necessarily to be made to its dictionary meaning coupled with a submission that it should be given that dictionary meaning consistent with the functions which the Act requires assessors to perform. They take no part as such in the making of the decision on appeal which is the province of the Commissioner alone and they have no vote of any kind in that respect as even jurors in criminal cases as judges of fact, used to have. Jurors and assessors in criminal cases generally speaking have never been required to possess any specialist skill, knowledge or experience apart presumably from shrewd common sense as peers of the person to be tried. Before the abolition of jurors there was statutory provision for their challenge when confronted by an accused person at the commencement of a trial as their names were picked out at random from a ballot box until the required total number of jurors was reached. The Land Acquisition Act contains no such provision and the total number of assessors on the panel of assessors and who they should be are entirely matters for determination by the relevant Minister and by him alone. From this panel the Commissioner for purposes of an appeal affecting an award of more than $250,000, is required to select *two* for each appeal. The Commissioner would accordingly seem to be bound to act only within the framework of the legislation appointing him as well as members of the panel from which he makes his selection whatever his own predilections in the matter may be. As the agreed shorthand transcript of the proceedings on the application he heard on April 25 indicates his "choice is limited," to quote his own words.

Although the dictionary meanings range from a person who assesses taxes or assesses the value of property for taxation to any adviser or assistant or a person who sits beside another sharing his rank and position and from a person who sits as assistant or adviser to a judge or magistrate to one appointed or elected to assist a judge with his special knowledge of the subject to be decided it is the last mentioned one from Webster's Collegiate dictionary which seems to fall nearest to the meaning for which Mr. Hilborne for the applicant contends. Earl Jowitt in his Dictionary of English Law defines an assessor as "a person called in to assist a court in trying a question requiring technical or scientific knowledge."

On the other hand, Mr. Menon for the Collector, contends that there is no statutory definition requiring as assessor under the Act to be a land valuer. As the Commissioner himself said at the hearing, "I have to make my choice from the panel . . . look at the panel. Is there any assessor who will act differently from these — or better qualified?" Earlier he stated, "they are not supposed to be experts on land matters. They are not chosen because they are experts on land valuation . . . you will find there is an advocate and solicitor, a stock broker — they are from various professions. In any case, I am not bound by their assessment. They are just people with common sense."

To this Mr. Hilborne replied according to the transcript "had it been a case not involving a great (deal) of money first and, secondly, had it not been an unusual case insofar as the other factors apart from land values . . . I would not have taken it further."

In my opinion, there is considerable force in the submission that the Act does not require assessors to be specially qualified in any particular manner or respect and that accordingly the Commissioner was perfectly entitled to make his selection from the panel appointed by the Minister under section 26 of the Act. This ground accordingly is bound to fall.

Ground Number Two: This brings me to Mr. Hilborne's *second ground* which affects only Mr. Goh Kee Song. As he very frankly admits, his client's real objection was to the latter's membership of the Board as an assessor and not so very much to Mr. Charlie Chi Swan Chiang's. He does not suggest that Mr. Goh would be prejudiced but he says that he cannot exclude his public service from "his" mind. Mr.

Goh, he says, by virtue of his close affiliation with the Government as a former Registrar of Vehicles under the City Council, later as Chairman, Singapore Telephone Board and presently, though the appointment took place after the hearing by the Commissioner, as a Director of Sembawang Shipyard Ltd., is a person who may be subconsciously prejudiced and that there is a real likelihood of bias on his part which incapacitates him from sitting as an assessor on the Board (see *R.* v. *Camborne Justices*[1] and *Re Appointment of S.H.D. Elias*).[2]

Before proceeding further, I should like to say at this stage, that I have decided to admit the full list of appointments not available to the applicant or his counsel at the time of the original hearing as contained in the further affidavit of September 8, 1975. I am unable to understand Mr. Menon's failure to object to the affidavit if that is what he really intended to do. He said last Tuesday he consented to that affidavit with a mental reservation as to the correctness or truth of the contents thereof. He did not tell me in so many words that he disputed the existence of the appointments set out therein and I feel bound to act upon the basis that they are in fact admitted.

Be that as it may, the question for determination is whether by virtue of all these appointments there is a real likelihood of bias on the part of Mr. Goh which requires the decision of the Commissioner of April 25 to be removed into this court in the exercise of its supervisory jurisdiction by way of an order of *certiorari* and quashed. If the applicant succeeds in the application to quash by *certiorari* he will automatically be entitled to an order for prohibition. If he fails on *certiorari* it does not necessarily follow that he will fail on prohibition.

I now turn again to the *first ground* relating to lack of qualification so far as Mr. Chi is concerned. He is only affected by that ground. I have no difficulty in holding that his case is certainly not a case for quashing the decision of the Commissioner by way of *certiorari* or for prohibiting him from continuing to serve as an assessor. The Motion so far as he is concerned must be dismissed with costs.

Mr. Goh's case is more difficult because it imports the *second* ground as well. So far as *certiorari* is concerned, the facts before the Commissioner, in my judgment, do not warrant my interference with his decision. There is not a shred of evidence to support the contention that, merely by virtue of his having been Registrar of Vehicles with the former City Council and later a chairman of a Statutory Board, there is a real likelihood of bias on the part of the Board as a result of his being selected as an assessor from the panel appointed by the Minister. I would accordingly dismiss the application for *certiorari* to quash the Commissioner's decision on that ground because it is impossible to hold that any error as such is disclosed on the face of the record.

It is with regard to prohibition that the true difficulty arises so far as concerns Mr. Goh. It is clear that the more recent appointments not brought to the attention of the Commissioner, either because the applicant did not know about them or because one of them was made after April 25, have been stressed because they appear to the applicant to lend greater support to the applicant's contentions of a real likelihood of bias on his part. In effect, says the applicant, his involvement directly or indirectly with the interests of the Government is so great that the case has ceased to be less than border-line. He is shown, says the applicant, to be incapacitated by virtue of these appointments from presenting an unbiassed approach consciously or subconsciously to his functions as a member of the Appeals Board on the pending appeal.

The fallacy underlying this argument as indeed any argument based on the holding of any of appointments mentioned on the applicant's behalf as showing or tending to show that close affiliation with the Government for which the applicant contends, lies in the fact that it is NOT the Government which is a party to the proceedings by the applicant on appeal but the Collector of Land Revenue. The latter is the officer who made the award under section 10 of the Act which is now under appeal. It is his decision as to the quantum of his award which is impugned. This decision was made by him in his capacity as Collector under the powers conferred on him by the Act. As such it was not a decision reached by the Government of Singapore however tempted the applicant may be to equate the Collector to the Government in this respect. To allege that the Government is a party to the appeal makes nonsense of the clear provisions of the Act.

The answer to Mr. Hilborne's fears and suspicions in this respect — or more correctly, to those of his client, the applicant herein — is that such fears and suspicions are misconceived and are entirely without merit as the Commissioner has found. Even if the officer holding the office of Comptroller of Income Tax, for example, had been appointed by name to the panel of assessors and if the Commissioner of the Appeals Board (Land Acquisition) had selected him to be an assessor to assist him there could be no valid objection to him on the ground of a real likelihood of bias on the part of the Board merely by virtue of his holding that office.

Any argument based on bias on the part of an assessor appointed to assist the Commissioner of the Board falls flat if it is remembered that responsibility for the Board's decision is that of the Commissioner alone and that the Commissioner is not bound by the advice or opinion of an assessor who sits with him. What the applicant has to show is that there is a real likelihood of bias on the part of the Commissioner and this he has not shown.

Mr. Goh's qualities in other respects (none of which are impugned) as well as his experience with the departments and Boards mentioned may well enhance his value as a member of the Board rather than retard it. Far from any likelihood of bias in favour of the Collector of Land Revenue, it could more forcefully be argued that it is more than likely that his presence on the Board with his former administrative experience may well act as a curb on possible executive excesses if any on the part of individual officers of the Government such as the Collector now that he is no longer in the public but in the private sector as a practising accountant.

I would add that there is not a single affidavit filed by the applicant which gives reasons for his personal misgivings with regard to Mr. Goh. It is not his counsel's misgivings however which count; it is the client's and, whilst no doubt his counsel is acting on instructions from him, the weight to be attached to affidavits other than those by himself would necessarily be less than if he had filed affidavits expressing his own views based on his own personal knowledge of the facts. His counsel can only state what he understands the facts to be from information he has gleaned from members of the public. Assuming however that every word of the affidavits filed on behalf of the applicant is exactly what the applicant would himself have said I would nevertheless reach the same conclusion on this Motion. I am not satisfied that Mr. Goh has been shown to be unfit for any of the reasons stated to act as an assessor in this appeal as between the applicant and the Collector of Land Revenue in respect of the award made by the latter. I would repeat what I have earlier said that the Government is not a party to the proceedings now before the Board.

The application with regard to Mr. Goh as well as Mr. Chi is accordingly dismissed with costs.

Order accordingly.

Solicitors: *Hilborne & Co.*

NICHOLAS ARTHUR NOCK v. MOHAMED ALI BIN SULEIMAN & ANOR.

[O.C.J. (Winslow J.) October 31, 1975]
[Singapore — Civil Suit No. 1450 of 1971]

Damages — Personal injuries — Injuries to head, face, fracture to base of skull etc. — Claim for damages — Whether defendant negligent — Liability — Damages — Assessment of quantum of damages — Grounds on which court decides.

Negligence — Plaintiff sustained injuries as a result of accident caused by lorry — Whether defendant liable — Claim against defendant for damages.

A colleague of the plaintiff and two others were travelling along Guillemard Road in a taxi from the airport and heading for the city closely followed by the plaintiff on his motor cycle. There were three lanes on that side of the dual carriageway which carried traffic citywards and both the taxi and the plaintiff's motor-cycle were in the centre lane. The plaintiff was in the middle left hand half of that centre lane as one faces the city. At the material time the lorry was travelling behind and on the inside lane to the left of both of them as one faces the city. The taxi was travelling at about 30 m.p.h. with the motor-cycle and the lorry at a slightly slower speed but more or less keeping pace behind the taxi.

Just before the accident took place on a slight right bend towards the city not far from Lim Ah Woo Road, the lorry accelerated slightly faster than the motor-cycle on the inside lane, got abreast the motor-cycle and cut sharply to its right when slightly more than half-way past the motor-cycle. It clipped the left handle-bar of the motor-cycle with the flat back of the lorry or slightly under there about a third of the way from its rear. The plaintiff fell to his left and the motor-cycle to its right and the rear wheel ran over the plaintiff's head.

As a result of the said accident, the plaintiff suffered injuries to his head and face including fractures to the base of his skull, the left mandible, left zygoma and his eleventh rib and the left ilium or pelvic bone. He also developed severe visual defects, double vision and a squint as well as diabetes insipidus of a permanent nature.

The plaintiff claimed damages against the defendants.

Held: (1) on the facts the defendants were totally liable;

(2) in all the circumstances of the case and in particular the facts that it could not be assumed that the plaintiff would succeed in remaining in the air force or would necessarily want so to remain, an award of £7 per week until he reaches the age of 60 years for loss of future earnings would be fair;

(3) the plaintiff would therefore be awarded $31,084.80 for future loss of earnings and $19,842.35 in respect of past loss of earnings.

(1) *Parry* v. *Cleaver* [1969] 2 W.L.R. 821.
(2) *Ti Huck & Anor.* v. *Mohamed Yusof* [1973] 2 M.L.J. 62.

CIVIL SUIT.

K. E. Hilborne for the plaintiff.

Tan Thian Chua for the defendants.

Winslow J.: According to Senior Aircraftsman Cook, a colleague of the plaintiff, he and his wife boarded a taxi from the Singapore Airport after all three of them and a Mr. Bell had seen a friend, Mr. Kemp off there. Cook and his wife sat in the rear of the taxi with Bell in front and, as the plaintiff did not know the way to the Cellar Bar in the City which was their destination, Cook took great pains to ensure that the plaintiff on his motor cycle was in fact following their taxi as he in fact did. On reaching the traffic lights at the junction of Paya Lebar Road with Geylang Road, Cook saw that the plaintiff, Nock was immediately behind the taxi.

After the lights changed in their favour the taxi moved off into Guillemard Road followed by the plaintiff. There were three lanes on that side of the dual carriageway which carried traffic Citywards and both the taxi and Nock's motor cycle were in the centre lane. Nock was in the middle of the left hand half of that centre lane as one faces the City. Cook was positive that he first noticed the defendant's lorry accelerating away from the traffic lights at the junction in question. He said that the lorry was on the inside lane to the left of both of them as one faces the City but nevertheless behind them. The taxi was travelling at about 30 m.p.h with the motor cycle and the lorry at a slightly slower speed but more or less keeping pace behind the taxi.

Just before the accident which took place on a slight right hand bend towards the City not far from Lim Ah Woo Road the lorry accelerated slightly faster than the motor cycle on the inside lane, got abreast of the motor cycle and cut sharply to its right for some inexplicable reason when slightly more than half-way past the motor cycle. It clipped the left handle bar of the motor cycle with the flat back of the lorry or slightly under there about a third of the way from its rear. The plaintiff fell to his left and the motor cycle to its right and the rear wheel ran over the head of the plaintiff. Fortunately Nock was wearing a crash helmet.

He nevertheless suffered injuries to his head and face including fractures to the base of his skull, the left mandible, left zygoma and his 11th rib and the left ilium or pelvic bone. He also developed severe visual defects, double vision and a squint as well as diabetes insipidus of a permanent nature.